

1 BARRY J. PORTMAN  
Federal Public Defender  
2 RONALD TYLER  
Assistant Federal Public Defender  
3 19th Floor Federal Building  
450 Golden Gate Avenue  
4 San Francisco, CA 94102  
Telephone: (415) 436-7700  
5  
6 Counsel for Defendant SALCEDO MENDOZA  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,	)	No. CR 08-0399 PJH
	)	
12 Plaintiff,	)	DEFENDANT'S MOTION IN LIMINE TO
	)	EXCLUDE UNDISCLOSED EVIDENCE
13 v.	)	
	)	Pretrial Conference: August 27, 2008
14 JAIME SALCEDO MENDOZA	)	
	)	
15 Defendant.	)	
	)	

---

16  
17 INTRODUCTION

18 Defendant Jaime Salcedo Mendoza is entitled to discovery of documents and objects  
19 within the government's possession, custody, or control. This Court imposed a deadline for the  
20 filing of motions in limine in this matter: ten court days before the pretrial conference, to wit,  
21 August 13, 2008. *See* Order for Criminal Pretrial Preparation (Docket # 15). The Court should  
22 exclude from trial all such documents and objects that were not disclosed by the government  
23 prior to that date.

24 DISCUSSION

25 Federal Rule of Criminal Procedure 16 provides for the discovery and inspection by the  
26 defense of certain documents and objects:

1 Upon a defendant's request, the government must permit the defendant to inspect  
2 and to copy or photograph books, papers, documents, data, photographs, tangible  
3 objects, buildings or places, or copies or portions of any of these items, if the item  
4 is within the government's possession, custody, or control and:

- 5 (i) the item is material to preparing the defense;  
6 (ii) the government intends to use the item in its case-in-chief at trial; or  
7 (iii) the item was obtained from or belongs to the defendant.

8 Fed. R. Crim. P. 16(a)(1)(E).

9 Rule 16 provides several possible remedies for a violation of the discovery  
10 requirements:

11 If a party fails to comply with this rule, the court may:

12 (A) order that party to permit the discovery or inspection;  
13 specify its time, place, and manner; and prescribe other just terms and  
14 conditions;

15 (B) grant a continuance;

16 (C) prohibit that party from introducing the undisclosed  
17 evidence; or

18 (D) enter any other order that is just under the circumstances.

19 Fed. R. Crim. P. 16(d)(2).

20 Here, the remedy of compelled discovery under Rule 16(d)(2)(A) would not be  
21 sufficient due to the very short time between the pretrial conference and the trial date,  
22 unless the Court were to order a continuance in the trial date pursuant to Rule 16(d)(2)(B).

23 However, Mr. Salcedo Mendoza objects to any delay in the trial date. Accordingly, the  
24 Court should prohibit the government from introducing at trial any evidence that was not  
25 disclosed prior to the deadline for filing motions in limine contained in the Court's order  
26 for pretrial preparation.

//

//

//

**CONCLUSION**

For the reasons stated, the Court should exclude from trial all evidence that was not disclosed before August 13, 2008.

Dated: August 13, 2008.

Respectfully submitted,

BARRY J. PORTMAN  
Federal Public Defender

/S/

RONALD TYLER  
Assistant Federal Public Defender